

**KAUA'I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
April 14, 2015**

The regular meeting of the Planning Commission Subdivision Committee of the County of Kaua'i was called to order at 8:41 a.m., at the Lihu'e Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Mr. Sean Mahoney
Mr. Louis Abrams

The following staff members were present: Planning Department – Kenneth Estes, Dale Cua, Duke Nakamatsu; Deputy County Attorney Ian Jung; Office of Boards and Commissions – Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Vice Chair Mahoney called the meeting to order at 8:41 a.m.

ROLL CALL

Staff Planner Kenneth Estes noted two committee members were present constituting a quorum.

APPROVAL OF THE AGENDA

On the motion by Louis Abrams and seconded by Sean Mahoney to approve the agenda, the motion carried by unanimous voice vote.

MINUTES of the meeting(s) of the Subdivision Committee

Minutes of February 24, 2015

Minutes of March 24, 2015

On the motion by Louis Abrams and seconded by Sean Mahoney to approve the minutes of February 24, 2015 and March 24, 2015, the motion carried by unanimous voice vote.

RECEIPT OF ITEMS FOR THE RECORD

Staff Planner Dale Cua noted there are several testimonies the Department received regarding Item D.1.d. of the Subdivision Committee. Testimonies from several neighboring property owners dated April 14th regarding this application was submitted to the Committee that morning. The testimonies were from Ms. Osterer, Mr. and Mrs. Biel, Mr. and Mrs. Page, Mr. and Mrs. Fregang, Mr. and Mrs. Sweet, Ms. Turner, and Mr. Lowbeit. They also have testimony dated April 13th from Mr. and Mrs. Cernosia, and Mr. and Mrs. Albrecht.

On the motion by Louis Abrams and seconded by Sean Mahoney to receive additional testimony, the motion carried by unanimous voice vote.

HEARINGS AND PUBLIC COMMENT

The Committee received testimony from Arnold Albrecht, full-time resident and property owner at the Makahuena. Mr. Albrecht stated Makahuena Point is an extremely popular place visited by locals and tourists where you can see the sunrise and the sunset. Mr. Albrecht and his wife, Jane, have some concerns regarding the current plan. They were surprised and disappointed that the 20' wide proposed easement on the west side of the CIRI property is not what CIRI represented as first proposed as a 60' wide park strip. Mr. and Mrs. Albrecht previously testified and supported it as a green strip with a pedestrian path. Another concern they have is cancelling the current easement the Coast Guard has to Makahuena Point, including the Coast Guard access road that goes along an easement which is adjacent to the proposed 20' easement. Mr. Albrecht asked the Commission (sic) to widen the public easement to 40' to include the existing easement for the Coast Guard access road and that is adjacent to the proposed A-2 easement, so there is no service road on the public pedestrian path. Mr. Albrecht stated they are concerned that the lots, as proposed now, go down to the shoreline beyond the proposed public access easement and shoreline set back because they're afraid future lot owners will prohibit public use.

An unidentified speaker read Jennie and Art Cernosia's written testimony (on file) to the Committee.

The Committee received testimony from Lorraine Osterer, resident and owner at the Makahuena. In Ms. Osterer's opinion, the developer could still achieve the subdivision without much disruption for extensive grading. She asked for consideration in protecting the public's interest by including the CC&R deeded restrictions as promised by CIRI; alternatives to using blasting and vibration in the extensive grading; alternatives to the ten (10) individual septic systems planned so close to the ocean and in an SMA; controls and bonding for damages from blasting pollution of dirt, runoff, and noise; onsite supervision by the appropriate protection agencies for this SMA; and EIS approval before subdivision approval. Ms. Osterer stated this area is an oceanfront SMA and deserves special attention to avoid ocean pollution. She represents a consensus among neighbors. They all suggest that the liability of property and environmental damage is so great that bonds from the developer and contractors need to be required for protection. She asked if the Commission (sic) will require this. They believe it is a

reasonable requirement for development considering recent previous damages to adjoining properties during vibration and grading at Kōloa Landing and Po'ipū traffic circle. Safety and health are an issue. Ms. Osterer stated the County revenues will drop during construction causing lost rentals in hundreds of adjoining luxury vacation condominiums on both sides.

GENERAL BUSINESS MATTERS

There were no general business matters.

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS (For Action)

Tentative Subdivision Action

Subdivision Application No. S-2015-11, Alan R. Matsumoto/Sandra M. Matsumoto, Proposed 2-lot Subdivision, TMK: (4) 2-4-014:027, Kalāheo, Kōloa, Kaua'i

Mr. Estes stated they have received all agency comments, except for the Department of Public Works. The Department recommends tentative approval.

Vice Chair Mahoney asked if there were questions for the Planner to which there were none.

Yolanda Cabral, on behalf of the applicant, stated they have read the tentative conditional report and have no concerns or comments at this time.

Vice Chair Mahoney asked if there were any questions by the Committee to which there were none.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve, the motion carried by unanimous voice vote.

Subdivision Applications No. S-2015-12, Ōma'o Ranch Lands, LLC, Proposed 2-lot Boundary Adjustment, TMK: (4) 2-7-003:005 & 024, Kōloa, Kaua'i

Mr. Estes stated since the proposal does not create additional lots, it is exempt from an Environmental Impact Assessment Fee and Park Dedication Fee; as well as the one-time subdivision limitation for parcels within the Agricultural District. The Department has received all agency comments, except for the Department of Public Works.

Vice Chair Mahoney asked if there were any questions or concerns for the applicant to which Mr. Estes replied there were none.

Avery Youn, representing the applicant, stated he understands the conditions, which he is fine with.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve tentatively, the motion carried by unanimous voice vote.

Subdivision Application No. S-2015-13, Alexander & Baldwin, LLC/McBryde Sugar Co., LLC/Kukui 'ula Development Co., LLC, Proposed 5-lot Subdivision, TMK: (4) 2-6-004:010, 11, 18 & 63 / 2-6-015:08, Kōloa, Kaua'i

Mr. Estes stated the proposal is subject to Ordinance No. 946, which requires the construction of curbs, gutters and sidewalks along the roadway frontage in Commercial Districts and in Residential Districts where the density permitted is four (4) units or more per acre. In addition, the Applicant is seeking a Modification of Requirement to deviate from the standard involving the construction of curbs, gutters, and sidewalks.

Mr. Abrams questioned why the applicant is proposing to eliminate curbs, gutters, and sidewalks to which Dennis Esaki replied he believes Tom Shigemoto sent a letter requesting a deferment until development.

Vice Chair Mahoney clarified that it's defer, not eliminate to which Mr. Esaki replied right.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve tentatively, the motion carried by unanimous voice vote.

Subdivision Application No. S-2015-14, CIRI Land Development Co., Proposed 12-lot Subdivision, TMK (4) 2-8-021:041, 044 – 068, Weliweli, Kōloa, Kaua'i

Mr. Estes recused himself from this item.

Mr. Cua stated that this project was evaluated through Class III Zoning Permit Z-III-2015-01 and Special Management Area Use Permit SMA(U)-2015-01. It was presented to and approved by the Planning Commission several months ago. The applicable requirements of the SMA permit is identified and incorporated in the Subdivision Report. The Department has received all of the comments from the reviewing agencies, whose requirements have been incorporated into the Subdivision Report as well. As a result, the Department recommends tentative approval.

Dennis Esaki, representing the applicant, stated their Attorney wanted clarification on the EIA Fee, if there's any credit for the open space they're providing to which Mr. Cua replied no.

Mr. Esaki requested deviation from the Shoreline Certification within six (6) months of final approval since it's a rocky shoreline. He added that it's a lengthy process to get it approved, so it would be difficult to complete within the timeframe.

Mr. Cua stated that it's the Department's practice to identify a current shoreline. A lot of it depends on when the application receives final subdivision approval because if it's within the timeline, the Department wouldn't have a problem with it. However, if the final subdivision approval occurs after the shoreline has been expired, that's where the Department would express concerns with not having a certified shoreline.

Mr. Esaki understood they will not be bonding it, they will be constructing it, which takes time. The six (6) month timeframe is really short compared to the normal one (1) year timeframe.

Mr. Esaki requested clarification that the first house on each lot does not require an SMA Permit to which Mr. Cua replied correct. Mr. Cua explained that in the event there is further development on the property, an SMA permit may be required.

Mr. Esaki stated they found an error in the Federal Insurance Rate Map (FIRM) and modification was requested.

Mr. Esaki requested to add credit on the Facilities Reserve Charge for the existing water meters because there was a facility there for what he believes was Hale Opio. Mr. Cua stated it would be the Department's recommendation for the Applicant to resolve requirements imposed by other agencies directly with the specific agency. If the requirements are modified, the specific agency will follow up with an amended Subdivision Report to the Department.

Mr. Esaki requested to modify the timeframe for the Shoreline Certification from six (6) months to one (1) year to which Mr. Cua replied as long as subdivision approval is obtained and the certified shoreline map is valid.

Vice Chair Mahoney asked the Planner to reiterate the beginning of his statement to which Mr. Cua replied the Department would recommend final subdivision approval as long as there is a valid certified shoreline map at the time the recommendation is made for approval. The Department would not recommend final subdivision approval if there was an expired certified shoreline map.

Attorney Jung clarified that the certified shoreline maps are only valid for a year, so if the time between getting the certified shoreline and coming in for extensions pass that one year, they'll have to redo the certified shoreline.

Vice Chair Mahoney asked the Planner to explain this item being before the Commission previously to which Mr. Cua replied several months ago this proposal came before the Planning Commission through a Special Management Area use Permit, SMA(U)-2015-1. The project was evaluated through a public hearing forum and conditions were imposed as a result of the SMA

Permit approval. The specific requirements applicable to the subdivision have been incorporated into the Subdivision Report, which are identified as Conditions 1.i. and 1.j.

Mr. Esaki clarified that there was a reduction in lots from twenty-five (25) existing to ten (10) new lots. He stated that the proposed lot line does go down to the ocean, but there will be a setback which allows additional legal public access than what exists today. There will be a rock wall along the line, and the owners will not be able to build beyond that.

Attorney Jung stated this is one of the first subdivisions where they imposed the new rules to require any proposed access that's going to be a part of the subdivision to go through the Open Space, Public Access, & Natural Resources Preservation Fund Commission for review, which is written into Condition 1.g.

Vice Chair Mahoney asked for any and/or additional public testimony on this item.

The Committee received additional testimony from Lorraine Osterer. Ms. Osterer requested clarification on the submitted map, particularly the open space that was referred to by Mr. Esaki. The map seems to show that open easement on Lot 5, but she wants to be assured if it goes across all of the lots below the public access pathway, or if it only refers to that specific lot. Ms. Osterer asked what does open space mean. She would like to see the restrictions specified, unless there's a County definition of open space that she's not familiar with. Also, it shows view easement on Lot 7, or the ocean side of Lot 7, so she'd like to know what the qualifications of that are as well. Being an SMA, they are committed to minimizing visual impacts in the entire lot area, but they are particularly interested in the shoreline.

Mr. Cua stated the subdivision map identifies a 100 foot shoreline setback that stretches along and impacts Lot 1 through Lot 8. Development within the shoreline setback area will be subject to the new shoreline rules that the County has imposed. As far as residential development the Applicant presented during the SMA Permit, that it will occur mauka of the shoreline setback. The development area will be defined by a rock wall that distinguishes between areas makai and mauka of the rock wall.

Ms. Osterer stated she understands from the shoreline survey that was done, that it does not go down to the highwater line because of the rocky cliffs. It only goes to the top of the cliffs and because of that, the real slope of the land was not assessed accurately in terms of the division into ten (10) lots.

Mr. Cua stated there are processes in which land surveyors follow to identify the shoreline. It's a joint effort between the land surveyor who is completing the subdivision map and the State land surveyor who needs to review the proposal, and who would have to have concurrence with what is being identified as the shoreline.

Ms. Osterer stated it wouldn't have qualified if they went to the actual lot boundaries.

The Commission received additional testimony from Mr. Albrecht. Mr. Albrecht stated another major concern he has is the filling in of the large depression, which is two (2) acres in

size and 30' deep with steep sides. This large depression is actually a collapsed lava tube that drained the Po'ipū crater area about 300,000 years ago, according to Geologist Dr. Charles Blay. Mr. Albrecht stated if it is destroyed, he doesn't see how it would follow the CZMA State law that reads, "Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline". He can't conceive how it is not considered a major alteration of the natural landform.

Vice Chair Mahoney asked for any comments or questions.

Mr. Abrams stated in regards to the depression, there seems to be two (2) issues; one is historic preservation, which is covered under some of the conditions that became available, and the other is grading and grubbing type issues, which Public Works would be looking at. Mr. Cua confirmed stating yes, it is part of the construction plan review process.

Mr. Abrams asked if they still have to obtain an NPDES permit that deals with storm runoff to which Mr. Cua replied yes.

Mr. Abrams asked if they have done it yet to which Mr. Cua replied no, but noted that it's a requirement for the subdivision.

Vice Chair Mahoney asked for any other comments to which there were none.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve tentatively, the motion carried by unanimous voice vote.

Mr. Abrams stated after listening to the testimony and looking at the tentative subdivision conditions, all of them seem lengthy enough, longer than other subdivision items, because it is a complicated project with issues that will be resolved in this tentative before they get final subdivision approval. Many of these issues will come up and need to be resolved by the various departments and the Planning Department. As a result, Mr. Abrams would stand in favor of giving it the tentative subdivision approval.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve tentatively, the motion carried by unanimous voice vote.

Final Subdivision Action

Subdivision Application No. S-2012-01, Florence S. Togioka Trust/Myles Togioka Trust/Ruth Togioka Trust, Proposed 2-lot Subdivision, TMK: (4) 1-3-010:070, Kekaha, Waimea, Kaua'i

Mr. Estes stated they have received all agency comments with no objections to granting final subdivision approval. Therefore, the Department is recommending final approval.

Yolanda Cabral, on behalf of the applicant, stated she understands the conditions by the Department and has no concerns.

Vice Chair Mahoney asked if there were any questions for the applicant to which there were none.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve, the motion carried by unanimous voice vote.

Subdivision Application No. S-2015-04, Phillip H. Richmond/Fia Palmer-Richmond/Mark Gabbay/Andrea Gabbay, Proposed 2-lot Consolidation, TMK: (4) 2-6-016:079 & 080, Kōloa (Makai), Kōloa, Kona, Kaua'i

Mr. Estes stated they have received all agency comments with no objections.

Vice Chair Mahoney asked if there were any questions for the applicant to which there were none.

Lindsey Crawford, from Kukui'ula Development Company representing Phil and Fia Richmond stated he understands the conditions and has no questions.

On the motion by Louis Abrams and seconded by Sean Mahoney to approve, the motion carried by unanimous voice vote.

ADJOURNMENT

Vice Chair Mahoney adjourned the meeting at 9:30 a.m.

Respectfully submitted by:



Darcie Agaran
Commission Support Clerk

() Approved as circulated (add date of meeting approval).

() Approved as amended. See minutes of _____ meeting.